

Proposed Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.12.7 NMAC, Safe Schools for All Students
3. **Rulemaking Action:** Repeal and Replace
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 30, Issue 18, September 24, 2019
5. **Effective Date:** November 12, 2019
6. **Citation to Specific Legal Authority:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-35-1 through 22-35-5 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To establish requirements for local school boards and public schools, including charter schools and governing bodies, to develop and implement bullying prevention policies and programs and to report on the implementation of the Safe Schools for All Students Act per the parameters established within the provisions of this rule.
8. **Link to Full Text of the Rule:** https://webnew.ped.state.nm.us/wp-content/uploads/2019/09/6.12.7-NMAC_Safe-Schools-Strikethrough_web-1.docx
9. **How Information on the Rule Can Be Obtained:** From the New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, NM 87501 or rule.feedback@state.nm.us.
10. **Comment Period and Deadlines:** September 24, 2019 to October 25, 2019 at 5:00 p.m. Written comments may be submitted to the New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, NM 87501, by electronic mail to rule.feedback@state.nm.us, or by fax to (505) 827-6520.
11. **Rule Hearing:** October 25, 2019, from 9:00 a.m. to 12:00 p.m., in Mabry Hall located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, NM 87501.
12. **Link to Permanent Agency Rulemaking Record:** <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>

Adopted Rule Update

1. **Register Issue and Date of Adopted Rule:** Volume 30, Issue 21, November 12, 2019
2. **Date Notice of Proposed Rulemaking Was Reported to the Committee:** October 25, 2019
3. **Link to Proposed Rule Report:** <https://www.nmlegis.gov/handouts/ALESC%20102319%20Item%2014%20A.2%20-%20PROPOSED%20RULE%20-%20Safe%20Schools%20for%20All%20Students.pdf>
4. **Minor, Non-Substantive Changes from the Rule as Proposed:** The adopted rule stayed as proposed and does not address any issues identified by LESC, including technical issues.

Summary of Proposed Rule

The September 24, 2019 issue of the *New Mexico Register* contained the Public Education Department's (PED) proposed repeal of 6.12.7 NMAC, "Bullying Prevention," and

replacement with 6.12.7 NMAC, “Safe Schools for All Students.” See, **Attachment 1, Proposed Rule, 6.12.7 NMAC, Safe Schools for All Students**. The proposed rule goes beyond existing rule to align with the Safe Schools for All Students Act, enacted during the 2019 legislative session, by clarifying and increasing the number of provisions public schools, local school boards, and governing bodies of charter schools are required to meet as they develop and implement annual bullying prevention policies and programs. This includes detailing the kinds of consequences that can result from an act of bullying, the procedures for reporting an act of bullying, and the information that must be submitted to track implementation of the Act.

Analysis

Statutory Authority. PED cites Section 9-24-8 NMSA 1978 and Sections 22-2-1 through 22-2-2 NMSA 1978, which grant the department general rulemaking authority, as statutory authority for the proposed rulemaking. PED also cites Sections 22-35-1 through 22-35-5 NMSA 1978 (Safe Schools for All Students Act).

Local School Board and Charter School Governing Body Responsibilities

Adoption and Enforcement of Bullying Prevention Policies. The proposed rule would require local school boards and governing bodies of charter schools to adopt and enforce bullying prevention policies by January 1, 2020, to prevent bullying and cyberbullying on school property, school or school district-sponsored events, and on school-sponsored transportation. The proposed rule defines “bullying” as any severe, pervasive, or persistent act or conduct that targets a student, whether physically, electronically, or verbally, and that:

- (1) May be based on a student’s actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or cognitive disability, or any other distinguishing characteristic; or an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and
- (2) Can reasonably be predicted to:
 - (a) Place a student in reasonable fear of physical harm to the student’s person or property;
 - (b) Cause a substantial detrimental effect on a student’s physical or mental health;
 - (c) Substantially interfere with a student’s academic performance, attendance, or participation in extracurricular activities; or
 - (d) Substantially interfere with a student’s ability to participate in or benefit from the services, activities, or privileges provided by a school or school-affiliated entity.

“Cyberbullying” is defined as any act of bullying that takes places through electronic communication.

Local school boards and governing bodies of charter schools would be required to include in their policy the definitions in the proposed rule, a statement prohibiting bullying, a statement prohibiting retaliation against persons who report or witness incidents of bullying, and a list of consequences, exclusive of suspensions and expulsions, that may result from an incident of bullying. The consequences must be designed to appropriately correct the bullying behavior; prevent another occurrence of bullying or retaliation; protect the target of bullying; and be flexible so that they can vary in method and severity based on the nature of the incident, the developmental age or cognitive level of the student who is bullying, and any history of problem behavior from the student who is bullying. Additionally, the list of consequences would need to limit the restrictive nature of consequences for cyberbullying incidents, such that while correcting cyberbullying behavior and preventing further incidents of cyberbullying, a student who commits acts of cyberbullying, is able to participate in or benefit from the services, activities, or privileges provided by the school to the greatest extent possible.

The proposed rule would require local school boards and governing bodies of charter schools to include bullying prevention policies and procedures for reporting bullying in student handbooks using developmentally and culturally appropriate language.

Procedure for Reporting Bullying or Retaliation for Reporting Bullying. Local school boards and governing bodies of charter schools would be required to include in their policy a procedure for reporting bullying or reporting retaliation for reporting an act of bullying. The proposed rule would require such procedure to allow oral reports in the preferred language of the person reporting, a method for anonymous reporting, provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report, and a method for parents to file written reports of suspected bullying.

Procedure for Prompt Investigation of Bullying and Appeal Process. Local school boards and governing bodies of charter schools would be required to include in their policy a procedure for prompt investigation of reports of violations of the bullying prevention policy and of complaints of bullying or retaliation. The proposed rule states there would need to be “a designation” of a school or school district administrator responsible for investigating or supervising reports of bullying and ensuring investigations are completed promptly after the receipt of a report, though it is unclear who would be designating the school or school district administrator. The proposed rule also requires a procedure for notifying parents of the student alleged to have committed an act of bullying and the parents of the students targeted by the alleged act. However, if it is the administrator’s professional opinion that notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate. Under the proposed rule, school employees who witness bullying or who receive reports of bullying would be required to notify the designated administrator within two calendar days of witnessing bullying or receiving reports of bullying. Additionally, the proposed rule would require an appeal process for a student who is accused of bullying or who is the target of bullying and who is not satisfied with the outcome of the initial investigation.

The proposed rule would require policies to be produced and disseminated in the appropriate language in school districts in which a substantial portion of the student population speaks a language other than English at home.

Section 30-3A-2 NMSA 1978 states harassment “consists of knowingly pursuing a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person and that serves no lawful purpose. The conduct must be such that it would cause a reasonable person to suffer substantial emotional distress.”

The proposed rule defines “regular volunteers” as those persons, including relatives of students, who commit to serve on a regular basis at a school district, charter school, or other educational entity without compensation.

Student Safety Support Plan. Local school boards and governing bodies of charter schools would be required to develop a student safety support plan for students who are targets of bullying that addresses safety measures the school will take to protect targeted students against further acts of bullying.

Procedure for Schools to Report Bullying and Harassment Incidents. Local school boards and governing bodies of charter schools would be required to establish procedures for public schools to report the number of bullying incidents and the number of harassment incidents, as defined by federal or state law, along with responses to these incidents, and would be required to report this information to PED annually. Reports would be submitted at a time determined by the department and through the department’s student teacher accountability reporting system (STARS) or through other means as determined by the department.

Public School Responsibilities

Bullying Prevention Program. Following the adoption of a bullying prevention policy, public schools would be required to establish an annual bullying prevention program for students that is aligned with New Mexico’s health education content standards with benchmarks and performance standards. Information on the bullying prevention policy would need to be incorporated into new employee training. Beginning in the 2020-2021 school year, schools would be required to provide annual training on bullying prevention to all school personnel and regular volunteers who have significant contact with students.

Publication of the Bullying Prevention Policy. School districts and schools would be required to develop a plan for the way in which the policy is to be publicized, including making the policy – and developmentally, culturally, and linguistically appropriate variants of the policy – available on school district or school websites, identifying a point of contact for bullying-related concerns, and informing parents and students about the policy through student handbooks and other resources, at a minimum, annually.

Reporting. Under the proposed rule, public schools would be required to document reports and investigations of bullying and to maintain those records for no less than four years.

School District and State-Chartered Charter School Responsibilities

Reporting. Beginning with the 2020-2021 school year, school districts and state-chartered charter schools would be required to submit a status report on the implementation of the provisions of the proposed rule, the aggregate number of bullying and harassment incidents within the school district or state-chartered charter school, and the corresponding responsive actions or disposition taken by the school district or state-chartered charter school, by type of action, for each bullying

incident of a student and for each harassment incident of a student. Under the proposed rule, reports would need to include, when known, a tabulation of the number of bullying and harassment incidents of students associated with nine actual or perceived distinguishing characteristics – race, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, and physical or cognitive disability – or an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics.

Public Education Department Responsibilities

Pursuant to the Safe Schools for All Students Act, PED is required to issue guidance for bullying prevention programs and policies in accordance with the Act. The department is responsible for promulgating rules for a “model policy” for local school boards on bullying prevention (in accordance with the Act) and any developmentally, culturally, or linguistically appropriate variants of the policy. The proposed rule does not address the department’s development of a “model policy,” as required by law.

The department is also required to provide guidance to local school boards on effective bullying prevention programs to reduce bullying and school violence. While the proposed rule requires public schools to establish bullying prevention programs, the proposed rule does not give explicit guidance on effective bullying prevention programs.

Pursuant to the Safe Schools for All Students Act, PED is required to evaluate if funding for bullying prevention programs is sufficient and make any recommendations for policy or programmatic change to improve addressing bullying issues in the state. Each school district and charter school is required to submit such evaluation and recommendations “at the same time or as part of the annual accountability report.” However, the proposed rule does not include such a requirement. PED should specify how feedback on bullying prevention policies will be collected and implemented.

Technical Issues

Objective. The proposed rule states the objective is applicable to “local school boards and public schools, including charter schools and governing bodies.” Because charter schools are public schools, it is unnecessary to include reference to charter schools. Additionally, “governing bodies” should be “governing bodies of charter schools.” The preferred wording would be “local school boards,” “governing bodies of charter schools,” and “public schools.”

Definitions. According to Section 14-4-5.7 NMSA 1978 of the State Rules Act, terms defined in applicable statute should not be defined in rule. With the exception of two grammatical errors, the proposed rule duplicates definitions from the Safe Schools for All Students Act for six terms – bullying, cyberbullying, electronic communication, gender identity, physical or cognitive disability, and sexual orientation.

The proposed rule defines “progressive discipline” similarly, but not identically, to how the term is defined in the Safe Schools for All Students Act. See **Attachment 2**,

Table of Conflicting Defined Term, for a comparison of language differences. Any conflict between statutorily defined terms and their corresponding regulatory definitions will be resolved in favor of statute. Further, the Safe Schools for All Students Act requires PED to “provide guidance to local school boards relating to effective forms of progressive discipline to reduce bullying and school violence.” While “progressive discipline” is defined in the proposed rule, the proposed rule does not refer to the term anywhere else. Pursuant to the Safe Schools for All Students Act, the proposed rule should require “progressive discipline” to be included in the list of consequences that can result from an incident of bullying.

In Paragraph 1, under the definition of “bullying” in Subsection A of Section 6.12.7.7 NMAC, the proposed rule should change the term “gender identify” to “gender identity.” In Section F of 6.12.7.7 NMAC, the proposed rule should change the fourth use of “or” to “of.”

Reporting. The proposed rule does not include “religion” as a distinguishing characteristic to be included in the tabulation of the number of bullying or harassment incidents school districts and state-chartered charter schools must report to PED, as required in the Safe Schools for All Students Act.

New Mexico Register / Volume XXX, Issue 21 / November 12, 2019

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 7 SAFE SCHOOLS FOR ALL STUDENTS

6.12.7.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
 [6.12.7.1 NMAC - Rp, 6.12.7.1 NMAC, 11/12/2019]

6.12.7.2 SCOPE: This rule applies to school districts, local school boards, state-chartered charter schools and governing bodies.
 [6.12.7.2 NMAC - Rp, 6.12.7.2 NMAC, 11/12/2019]

6.12.7.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of the department and the department under the authority of Sections 9-24-8, 22-2-1, 22-2-2, and 22-35-1 through 22-35-5 NMSA 1978.
 [6.12.7.3 NMAC - Rp, 6.12.7.3 NMAC, 11/12/2019]

6.12.7.4 DURATION: Permanent
 [6.12.7.4 NMAC - Rp, 6.12.7.4 NMAC, 11/12/2019]

6.12.7.5 EFFECTIVE DATE: November 12, 2019, unless a later date is cited at the end of a section.
 [6.12.7.5 NMAC - Rp, 6.12.7.5 NMAC, 11/12/2019]

6.12.7.6 OBJECTIVE: To establish requirements for local school boards and public schools, including charter schools and governing bodies, to develop and implement bullying prevention policies and programs and to report on the implementation of the Safe Schools for All Students Act per the parameters established within the provisions of this rule.
 [6.12.7.6 NMAC - Rp, 6.12.7.6 NMAC, 11/12/2019]

6.12.7.7 DEFINITIONS:

A. "Bullying" means any severe, pervasive, or persistent act or conduct that targets a student, whether physically, electronically, or verbally, and that:

(1) may be based on a student's actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identify, spousal affiliation, physical or cognitive disability, or any other distinguishing characteristic; or an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and

(2) can be reasonably predicted to:

(a) place a student in reasonable fear of physical harm to the student's person or property;

(b) cause a substantial detrimental effect on a student's physical or mental health;

(c) substantially interfere with a student's academic performance, attendance, or participation in extracurricular activities; or

(d) substantially interfere with a student's ability to participate in or benefit from the services, activities, or privileges provided by a school or school-affiliated entity.

B. "Cyberbullying" means any bullying that takes place through electronic communication.

C. "Electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording device.

D. "Gender identity" means a student's self-perception, or perception by another, of the student's identity as a male or female based upon the student's appearance, behavior, or physical characteristics that are in accord with, or opposed to, the student's physical anatomy, chromosomal sex, or sex at birth.

E. "Harassment" means a pattern of conduct that is intended to annoy, seriously alarm, or terrorize another person or group of people.

F. "Physical or cognitive disability" means a physical or cognitive impairment that substantially limits one or more of a student's major life activities.

G. "Progressive discipline" means disciplinary action other than suspension or expulsion from school that is designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, or restorative school practices to repair the harm done to relationships and other students from the student's misbehavior, and may include:

- (1) meeting with the student and the student's parents;
- (2) reflective activities, such as requiring the student to write an essay about the student's misbehavior;
- (3) counseling;
- (4) anger management;
- (5) health counseling or intervention;
- (6) mental health counseling or intervention;
- (7) participation in skill-building and conflict resolution activities;
- (8) community service; and
- (9) in-school detention or in-school suspension that is for a constructive purpose and may take place during lunchtime, recess, after school, or during weekends.

H. "Regular volunteers" means those persons, including relatives of students, who commit to serve on a regular basis at a school district, charter school, or other educational entity without compensation.

I. "Sexual orientation" means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

[6.12.7.7 NMAC - Rp, 6.12.7.7 NMAC, 11/12/2019]

6.12.7.8 BULLYING PREVENTION POLICIES - ADOPTION AND ENFORCEMENT:

A. By January 1, 2020, each local school board or governing body shall adopt and enforce policies to:

- (1) prevent bullying and cyberbullying:
 - (a) on its property, including electronic communication on or with the use of its property;
 - (b) at school or district-sponsored events; and
 - (c) on any school-sponsored transportation; and
- (2) prohibit electronic communication directed at a student that is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities, or privileges provided by the public school.

B. Each local school board and governing body shall control the content of its policy, provided that the policy includes:

- (1) the definitions as set forth in this rule;
- (2) a statement prohibiting bullying;
- (3) a statement prohibiting retaliation against persons who report or witness incidents of bullying;
- (4) a list of consequences, exclusive of suspension and expulsion, that can result from an incident of bullying, and with consequences that are designed to:
 - (a) appropriately correct the bullying behavior;
 - (b) prevent another occurrence of bullying or retaliation;
 - (c) protect the target of the bullying;
 - (d) be flexible so that, in application, the consequences can vary in method and severity based on:
 - (i) the nature of the incident;
 - (ii) the developmental age and/or cognitive level of the student who is bullying; and
 - (iii) historical problem behavior from the student who is bullying; and
 - (e) limit the restrictive nature of consequences for cyberbullying incidents, such that while correcting cyberbullying behavior and preventing further incidents of cyberbullying, a student with cyberbullying behavior is able to participate in or benefit from the services, activities, or privileges provided by the school to the greatest extent possible;

(5) a procedure for reporting bullying and for reporting retaliation for reporting an act of bullying, including:

- (a) an allowance for reporting orally and in the preferred language of the person reporting;

- (b) a method for anonymous reporting; provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report of an actual bullying incident; and
- (c) a method for parents to file written reports of suspected bullying; and
- (6) a procedure for prompt investigation of reports of violations of the bullying prevention policy and of complaints of bullying or retaliation, including:
 - (a) designation of a school or district administrator who has the responsibility to:
 - (i) investigate or supervise the investigation of all reports of bullying and
 - (ii) to ensure that investigations are completed promptly after the receipt of any report made under this rule;
 - (b) a procedure for notification of the parents of the student alleged to have committed an act of bullying and the parents of the student targeted by the alleged act; provided that if, in the administrator's professional opinion, notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate;
 - (c) a requirement that school employees who witness bullying or who receive reports of bullying notify the designated administrator within two calendar days of the employee witnessing or receiving a report of bullying;
 - (d) an appeal process for a student who is accused of bullying or who is the target of bullying and who is unsatisfied with the outcome of the initial investigation; and
 - (e) development of a student safety support plan for students who are targets of bullying that addresses safety measures the school will take to protect targeted students against further acts of bullying.

C. Each local school board and governing body shall include bullying prevention policies and procedures for reporting bullying in student handbooks using developmentally and culturally appropriate language. Policies shall be produced and disseminated in appropriate languages in any school district in which a substantial portion of the student population speaks a language other than English at home.

D. Each public school shall document reports and investigations of bullying and shall maintain those records for no less than four years.

E. Each local school board or governing body shall establish procedures for public schools to report the number of bullying incidents and the number of harassment incidents, as defined by federal or state law, along with responses to these incidents, and shall report this information annually to the department at such time as determined by the department and through the department's student teacher accountability reporting or through other means as determined by the department.

[6.12.7.8 NMAC - Rp, 6.12.7.8 NMAC, 11/12/2019]

6.12.7.9 BULLYING PREVENTION PROGRAMS - ESTABLISHMENT:

A. Following adoption of a bullying prevention policy, each public school shall:

- (1) establish an annual bullying prevention program for students aligned with New Mexico's health education content standards with benchmarks and performance standards;
- (2) provide annual training beginning with the 2020-2021 school year and each school year thereafter on bullying prevention to all school personnel and regular volunteers who have significant contact with students; and
- (3) incorporate information on the bullying prevention policy into new employee training.

B. Each school district and public school shall develop a plan for the way in which the policy is to be publicized, including:

- (1) making each school district's bullying prevention policy, and developmentally, culturally and linguistically appropriate variants of the policy, available on district and/or school public websites;
- (2) identifying a point of contact for bullying-related concerns; and
- (3) informing parents and students about the policy at least annually through student handbooks and other resources.

[6.12.7.9 NMAC - N, 11/12/2019]

6.12.7.10 REPORTING REQUIREMENTS:

A. Beginning with the 2020-2021 school year, each school district and state-chartered charter school shall annually submit the following to the department in a method prescribed by the department and in a timeframe determined by the department:

- (1) a status report on the implementation of the provisions of this rule;

- (2) data elements on the implementation of this rule including:
- (a) the aggregate number of bullying incidents of students within the district or state-chartered charter school;
 - (b) the aggregate number of harassment incidents of students within the district or state-chartered charter school; and
 - (c) the corresponding responsive action or disposition taken by the district or state-chartered charter school, by type of action, for each bullying incident of a student and for each harassment incident of a student.

B. Each school district and state-chartered charter school shall include, in its reporting, when known, a tabulation of the number of bullying incidents of students and the number of harassment incidents of students associated with each of the following actual or perceived distinguishing characteristic:

- (1) race;
 - (2) color;
 - (3) national origin;
 - (4) ancestry;
 - (5) sex;
 - (6) sexual orientation;
 - (7) gender identity;
 - (8) spousal affiliation;
 - (9) physical or cognitive disability; or
 - (10) an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics.
- [6.12.7.10 NMAC - N, 11/12/2019]

HISTORY OF 6.12.7 NMAC: [RESERVED]

6.12.7 NMAC, Bullying Prevention, filed 11/30/2006, was repealed and replaced by 6.12.7 NMAC, Safe Schools for All Students, effective 11/12/2019.